



Policy Number:	4
Organization	Ontario Land Trust Alliance (OLTA)
Title of Policy:	Board Accountability & Risk Management
Recommended:	BD&G Chair & Committee – Nov 19, 2018
Approved by:	OLTA Board of Governors – Nov 19, 2018
Next Review	November 2021 or when needed

## **Board Accountability and Risk Management Policy**

### **Policy Statement**

The OLTA Board of Governors is accountable for acting ethically and professionally in conducting the affairs of the Alliance in accordance with current legislated and financial responsibilities and the standards and practices for Canadian Land Trusts. Boards who do not exercise reasonable oversight in their fiduciary duties may generate agency and personal liability for errors in judgment or wrongdoing. The registered status of OLTA as a not for profit corporation and charity, does provides basic protection to the Board of Governors. However, they must collectively and individually act diligently, honestly, in good faith and in the best interests of the Alliance and its membership.

### **Board Accountability**

Standards for accountability and behaviour of Governors and Officers are generally described in Not for Profit legislation, bylaws, policies and guides as primary duties that Boards owe their organizations. The OLTA and Ontario Land Trusts are also guided by Canadian Land Trust - Standards and Practices, Generally Accepted Accounting Practice (GAAP) and the Canada Revenue Agency (CRA) guidance for charities.

These liabilities and accountabilities include the following key duties:

**Duty of Care** - Every governor and officer must exercise the fiduciary care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances. Ability to meet this duty requires active engagement of Governors in informed decisions.

**Duty of Loyalty** - Every governor and officer must act honestly, in good faith, legally and in a manner that could be considered as in the best interests of the corporation. It is the Governor's duty to avoid and declare all potential conflict of interest situations.

**Duty of Obedience** - Every governor and officer must adhere to and pursue the purpose, mission, vision, policies, directions and priorities of the organization as is provided in its approved bylaws, strategic plans, budgets, operating policies and guides.

Liability may occur for breaching of duties, wrongful conduct e.g. conflict of interest or a personal gain or violation of laws that apply to individuals or corporations.

## **Risk Management**

Risk management is about understanding potential impacts that a person or corporation can face and, having considered relevant factors, responding with sound judgment and reasonable care. Successful risk management also ensures there has been a review and ranking of potential risks together with practical analysis of the plans, policies, practices or processes to manage risks. Good management systems will normally look after low and medium risk. Specific emergency, mitigation or precautionary measures are set out for higher risk. Where excessive risk is predicted with high frequency, the agency may delete or modify programs to match their appetite for risk acceptability.

Risk can be defined as the real possibility that something harmful or undesirable could happen. Governors of not-for-profit corporations may encounter harmful or undesirable situations e.g. something will occur that adversely affects business of the corporation or someone is held to account for a situation arising from actions or inactions. None of the protections that are available to Governors e.g. due diligence, mitigation action by the corporation, indemnification in statutory provisions or liability insurance can provide absolute protection against wrongdoing. However, good governance provides guidance on best practices, to support decisions and actions of the Board and Staff.

**Diligence and Exposure** - As part of their primary duties, all Governors of not-for-profit corporations have an obligation to exercise due diligence in governing, overseeing and managing the operations of the corporation. This includes attending Board meetings, setting policies and priorities, reviewing financial reports, monitoring compliance with standards and ensuring Board decisions are based on reliable information.

Due diligence means that Governors must be oriented to key aspects of the corporation. Governors should attend most Board meetings to engage in dialogue and decisions. If a Governor cannot be present at a Board meeting, they should review agenda materials in advance and ask questions if they have concerns. After reading draft minutes, if there are questions, Governors should ask for any clarification as soon as possible.

**Indemnity from Liability** – Under its approved bylaws and policies, the Board of Governors may by specific agreement cover the cost or otherwise assist Governors with lawsuits resulting from their reasonable actions or inactions in their capacity as an OLTA Governor. Coverage may extend to situations where actions are successful in a court decision. Indemnification will be of minimal help in the following situations:

1. The Alliance does not have sufficient assets or insurance coverage to meet the financial obligations of the indemnity from liability;
2. A Governor's or Officer's acts were beyond the scope of his or her authority as a Governor, or a Governor acted without good faith or acted dishonestly;
3. A Governor's or Officer's actions or inactions constitute willful neglect or default;
4. A Governor's or Officer's actions or inactions involve a breach of their fiduciary obligations, even if this did not constitute any willful neglect or default;
5. A Governor or Officer is held personally liable for statutory monetary payments, such as unpaid wages or government deductions; or
6. The Governor or Officer is involved in an illegal act.

**Insurance for Governors** - The OLTA holds Directors and Officers (D&O) liability insurance. The general liability insurance policy of a not-for-profit corporation provides only limited protection to Governors (aka Directors or Board Members) or Officers against any alleged wrongful acts. This type of policy, which is carried by the OLTA, protects us against claims arising from the organization's business and operations.

The D&O liability insurance protects against those claims arising out of Board decisions or omissions, or out of actions or activities performed directly under authority of the Board of Governors. Where Governors and Officers act as trustees, claims arising from that aspect of their work are not fully covered by the standard Directors and Officers (D&O) liability insurance. A "fiduciary liability" policy is required to protect Governors against these types of claims. Directors and Officers liability insurance complements the general liability insurance coverage held by the OLTA.

The D&O liability policy insures against risks that are not covered under the general liability insurance policy, but does not cover all actions against Governors or Officers. Therefore, it is important for Governors to periodically review the exclusions in the coverage and, where appropriate, to consider and evaluate having additional and desired coverage (such as a "fiduciary liability" policy).

Directors and Officers (D&O) liability insurance of a not-for-profit corporation will not provide coverage for actions by OLTA Governors or Officers for breach of trust arising from mishandling funds, improper investments, and illegal activities e.g. violations of the Anti-Terrorism Act and/or other statutory violations.

## **Good Governance**

The best approach to Board accountability, liability and risk management is to engage a qualified team of conscientious and committed Governors who become aware of their duties and responsibilities. Liabilities are also met best with Governors who learn and understand how to carry out their duties and responsibilities using risk management plans, guiding policies, accepted practices and diligence.